



**U.S. Department of State
Bureau of Educational and Cultural Affairs
Private Sector Exchange**

February 1, 2019

Guidance Directive 2019-01

Clarifying the Teacher Exchange Program Regulations at 22 CFR 62.24 and Superseding All Previous Category-Specific Guidance Directives¹

This Guidance Directive clarifies the Exchange Visitor Program (EVP) regulations governing the Teacher category [22 CFR 62.24] with emphasis on the following provisions:

- **Reinforcing the Category's Purpose and Intent**
- **Exchange Visitor Eligibility Criteria and Related Use of SEVIS**
- **Temporary Employment of Exchange Teachers**
- **Compensation**
- **Transparency and Reasonable Fees**
- **Academic Cycles**
- **Issuance of Forms DS-2019**
- **Teacher Transfers and Program Extensions**
- **No Objection/Approval Letters from State-Level Departments of Education**
- **Third-Party Actions**
- **Program Availability in All U.S. Jurisdictions**

1. Teacher Category: Purpose and Intent

The Teacher category of the EVP promotes the exchange of foreign teachers to U.S. host schools and enhances mutual understanding between the people of the United States and other countries. Exchange teachers sharpen their professional skills and are required to participate in cross-cultural activities in U.S. schools and communities. They return home to share their experiences and increased knowledge of the United States and its educational system, culture, and society [22 CFR 62.24(a)].

Qualified foreign teachers teach full-time in accredited academic public and private U.S. primary and secondary schools (K-12) [22 CFR 62.24(a)(c)(1)]. The Department does not consider K-12 institutions offering predominantly vocational or technical programs academic for purposes of exchange teachers' placements. Exchange teachers may also teach at the pre-kindergarten level,

¹ See Section 12 for a list of all the Guidance Directives superseded by the issuance of the instant Guidance Directive.

but only in language immersion programs at accredited schools for at least fifty percent of the school day where regular courses of study are in a language not native to the majority of the student population [22 CFR 62.24(c)(6)].

2. Exchange Visitor Eligibility Criteria and Related Use of SEVIS

A full-time teaching position requires a minimum of 32 hours per week of teaching or teaching-related administrative activities [22 CFR 62.24(c)(2)] such as lesson planning, curriculum development, grading, and field trip planning for students. A full-time exchange teacher must be a teacher of record, not a teacher's assistant/aide, substitute teacher, or someone holding a non-instructional position. The following Position Codes (occupation in their home country) are the only codes that sponsors should use when creating a Form DS-2019 in the Teacher category in the Student and Exchange Visitor Information System (SEVIS):

- 222 Secondary School Teacher or Staff
- 231 Elementary Principal, Teacher or Staff
- 242 Special School, Institute, or Vocational Teacher or Staff

Sponsors must not place exchange teachers in positions not allowed by the regulations, specifically principal, assistant principal, school director, guidance counselor, librarian, and teacher trainer. Although these are not approved activities for placements in the Teacher category, *teacher applicants* may use both their teaching and teaching-related administrative experience abroad to qualify for the Teacher category. Accordingly, sponsors should **not** select any of the following Subject Field Codes (occupation during the exchange program in the U.S.) in SEVIS:

- Counselor Education/School Counselling and Guidance Services (13.1101);
- Educational Administration and Supervision, Other (13.0499);
- Educational Leadership and Administration, General (13.0401);
- Elementary and Middle School Administration/Principalship (13.0408);
- Higher Education/Higher Education Administration (13.0406);
- Psychology Teacher Education (13.1335);
- Sales and Marketing Operations/Marketing and Distribution Teacher Education (13.1310);
- Secondary School Administration/Principalship (13.0409);
- Student Counselling and Personnel Services (13.1102);
- Student Counselling and Personnel Services, Other (13.1199);
- School Librarians/School Library Media Specialist (13.1334);
- Speech-Language Pathology/Pathologist (51.0203);
- Superintendency and Educational System Administration (13.0411);
- Teacher Assistant/Aide (13.1501);
- Teaching Assistants/Aides, Other (13.1599);
- Teacher Education and Professional Development/Specific Levels and Methods, Other (13.1299);

- Teacher Education and Professional Development/Specific Subject Areas, Other (13.1399); or
- Teacher Education/Multiple Levels (13.1206).

3. Temporary Employment of Exchange Teachers

Sponsors may not use the Teacher category to recruit and train foreign teachers for permanent employment in the United States. An exchange visitor's placement as a teacher at a primary or secondary accredited academic institution must be temporary, even if the school normally classifies the teaching position as permanent [22 CFR 62.24(f)(4)]. The Department expects every exchange teacher to return to his or her home country upon completion of the exchange programs. That teacher will be eligible to participate in another teacher exchange program provided that he or she has resided outside of the United States for at least two years following the successful completion of the original exchange program and continues to meet the eligibility requirements [22 CFR 62.24(l)].

4. Teacher Compensation

Exchange teachers must teach full-time at a primary or secondary accredited educational institution in the United States. Their compensation must be commensurate with those of U.S. teachers with similar responsibilities and similar educational background [22 CFR 62.24(f)(5)]. This applies whether the school is a public or private one and whether an exchange teacher is paid by a U.S. public school district or some other source. Sponsors should be prepared to provide evidence of exchange teachers' full-time positions and commensurate compensation upon the Department's request [22 CFR 62.10(e)].

5. Transparency and "Reasonable" Program Fees

Program sponsors are required to list the information outlined in 22 CFR 62.10(b)(c) on their websites and include in their recruiting materials a general summary of program fees and costs. At a minimum, the summary should include the following information: sponsor fee; foreign or domestic third-party or partner fees; visa application fee; SEVIS fee; insurance costs; estimates for food, housing and local transportation costs; expected work-related deductions; and estimates or ranges for all other fees charged for, and significant general costs related to participation in, the Teacher category [22 CFR 62.24(g)]. Sponsors are required to disclose to applicants all anticipated program costs *before* such applicants enter into contracts with host schools [22 CFR 62.24(g)(1)(2)].

The Department reminds sponsors and their third parties that bonded labor practices and price gouging are contrary to the spirit of the EVP and its public diplomacy function, which is to foster good will and citizen ambassadorship. Fees charged exchange visitors participating in the Teacher category must be reasonable. The following are examples of unreasonable fees that some sponsors have charged teachers:

- Up to \$19,000 in fees for *mandated* services (see [*Foreign Teachers Pay Dearly to Fill N.M. Jobs: Searchlight New Mexico, October 11, 2018*](#)) that effectively bond an

exchange visitor to a particular position. The Department received complaints from a foreign embassy, school administrators, and exchange teachers.

- As much as 10 percent of a teacher's annual gross salary as a recruitment fee.
- Fees/charges that are substantially higher than market-based costs for similar goods and/or services.

6. Academic Cycles

22 CFR 62.24 (f)(2) states that sponsors must ensure that “[p]rogram dates coincide with the U.S. academic year cycle to ensure a smooth transition as exchange teachers arrive and depart, unless the sponsor notifies, and receives approval from, the Department for other exchange dates before the sponsor issues any Form DS-2019; sponsors should ensure that the program dates are included in the exchange teacher's contract.” The Department will consider exceptions in order to accommodate exchange teachers from countries where the academic year cycle differs from the U.S. academic year cycle or host schools whose academic cycle differs from a traditional U.S. academic year cycle (e.g., private Japanese school in the U.S. operating on a traditional Japanese academic year cycle). In such situations, sponsors must notify and receive approval from the Department before an exchange teacher begins his or her exchange program. The sponsor must include such alternative dates in its contract with the exchange teacher and ensure that the host school agrees to those alternative dates.

7. Issuance of Forms DS-2019

Sponsors may not issue a Form DS-2019 until a teacher applicant has received and accepted a written offer of a full-time teaching position from the accredited primary or secondary schools at which she or he will teach. It is against program regulations for offers to be general (e.g., from a school district) or for teachers to be subject to interviews or other requirements upon arrival in the United States in order to secure a specific teaching position [22 CFR § 62.24(f)(1)].

8. Exchange Teacher Transfers and Program Extensions

Due to the contractual relationships in the administration of the teacher category (exchange teacher and the sponsor, the exchange teacher and the host school, and the sponsor and the host school), the Department does not contemplate the transfer of teachers among designated sponsors. Accordingly, the Department does not permit exchange teachers to transfer to other designated sponsors, except in compelling circumstances (*e.g.*, a sponsor goes out of business).

The EVP regulations do not prohibit the transfer of an exchange teacher to a different school in the same or different district or state, when warranted. Although exchange teachers enter into contracts with host schools, sponsors should ensure that contract terms and structured processes exist that make it possible for sponsors to evaluate exchange teacher requests to transfer between host schools and/or school districts. At a minimum, changes in the site of activity should be considered when circumstances at the current site of activity may significantly affect the health,

safety, and welfare of the exchange teacher. The Department offers the following examples of situations in which the transfer of an exchange teacher may be warranted:

- A host school's inability to continue compensating the exchange teacher according to the terms of the employment contract;
- Unsuitable conditions that are beyond the exchange visitor's control, e.g., a geographic area that is unsafe or too expensive, or a hostile work environment; and
- A host school's loss of its accreditation.

If an exchange teacher's request to be transferred to a different school is denied, s/he has the right to submit a complaint to the Department if the denial is negatively affecting health, safety, or welfare. Should the Department receive a complaint from an exchange teacher about a sponsor's denial of a request for a new school placement, the Department will gather more information about the situation, including evidence as to whether the denial negatively affects the health, safety, and welfare of the teacher. When looking into such a complaint, the Department will gather case information from all parties involved – the exchange teacher, the sponsor, and the school's administration. If the Department deems that a new placement is the only option for resolving the issue, the Department may urge the sponsor, among other things, to reconsider the denied request for transfer in light of the Department's finding.

A change in the site of activity (host school) for an exchange teacher must be to another full-time position, not a temporary position lasting a few months only to have the exchange teacher request another change. This program is an educational and cultural exchange and is not designed to fill staffing needs of U.S. schools [22 CFR 62.24(a)].

Approval of a change in the site of activity to another school or school district does not preclude an exchange teacher from extending his or her program. Although the language of the extension provision requires evidence of performance and cultural activities during the "previous three years," only the host school at which the exchange teacher is placed at the time an extension is requested must submit a reference letter as required by 22 CFR 62.24(k). The letter should include the length of time the exchange teacher had been teaching at the host school.

The Department, in its discretion, may authorize a sponsor to extend an exchange teacher's participation for either one or two additional years beyond the initial three-year exchange period. Sponsors that have applied for a two-year extension on behalf of a host school and its exchange teacher and received permission from the Department only for a one-year extension may apply again to extend the program of that host school's exchange teacher for an additional year [22 CFR 62.24(k)(2)-(6)]. Sponsors should include a copy of the original extension request with the subsequent request.

9. No Objection/Approval Letters from the State-Level Department of Education

Responsible and Alternate Responsible Officers must be thoroughly familiar with not only the Federal Regulations that govern the EVP, but with: (1) all relevant immigration laws; (2) all federal and state regulations and laws pertaining to the administration of the program; and (3) Department of State and the Department of Homeland Security policies, manuals, instructions,

and guidance on both SEVIS and all other operations relevant to the administration of the exchange visitor program [22 CFR 62.11(a)]. The Department stresses that sections 7.2.14 and 9.3.2 of the [User Manual for Temporary Users of SEVIS \(How to Complete and Submit the Form DS-3036, Exchange Visitor Program Application\)](#) require new sponsors to submit approval letters (letters of no objection) from the State Department of Education for each state in which foreign teachers will be placed in public schools. Every sponsor, regardless of its designation date, must ensure that the Office of Private Sector Exchange Designation has copies of all approval letters in its program file by emailing scanned copies to DesignationTeacherPr@state.gov prior to placing an exchange teacher in that state.

10. Actions of Third Parties Imputed to Sponsors

The Department considers host schools, school districts, overseas partners, and any other organization involved with implementing any part of an exchange teacher's program to be third parties pursuant to EVP regulations. Regulatory non-compliance by a third party acting on a sponsor's behalf will be imputed to the sponsor. Accordingly, sponsors must ensure that contracts or agreements between third parties and exchange teachers adhere to all EVP regulations [22 CFR 62.2 *Third party*].

11. Program Availability in All U.S. Jurisdictions

All U.S. states, U.S. territories, and the District of Columbia may host exchange teachers for an initial three-year period, followed by an optional one or two-year extension subject to Department permission in individual cases, as described in 22 CFR 62.24(k). For this reason, the Department no longer offers different lengths of programs to the Departments of Education of individual states and rescinds Guidance Directives 2010-02, 2010-04, 2010-05, and 2010-06.

12. Superseded Teacher Category Guidance Directives

The Teacher category Guidance Directives identified below are superseded by the current Guidance Directive 2019-01:

- **Guidance Directive 2010-06:** Program Duration for Exchange Visitor Program Teachers Currently Teaching in Commonwealth of Georgia Public Schools
- **Guidance Directive 2010-05:** Program Duration for Exchange Visitor Program Teachers Currently Teaching in Commonwealth of South Carolina Public Schools
- **Guidance Directive 2010-04:** Program Duration for Exchange Visitor Program Teachers Currently Teaching in Commonwealth of Virginia Public Schools
- **Guidance Directive 2010-02:** Program Duration for Teachers Currently in North Carolina Public Schools
- **Guidance Directive 2009-01:** Teacher Sponsors – One Year Extension
- **Guidance Directive 2008-01:** Teacher Category: Compensation, Program Duration, and Transfers

Should you have any questions, please contact the Office of Private Sector Exchange Designation at DesignationTeacherPr@state.gov.

A handwritten signature in blue ink, appearing to read 'G. Kevin Saba'.

G. Kevin Saba
Director, Policy & Program Support
for Private Sector Exchange